

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05-CR-00046-RJC-DSC

USA

v.

CURTIS ARNOLD

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ORDER

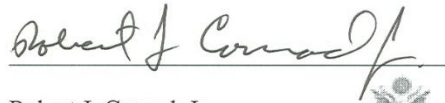
THIS MATTER is before the Court upon motion of the defendant pro se again challenging his Career Offender sentence. (Doc. No.141).

The defendant contends that “newly discovered evidence,” that is, the Supreme Court’s decision in Mathis v. United States, 136 S. Ct. 2243 (2016), renders his Career Offender sentence invalid. A motion for new trial based on newly discovered evidence must be filed within three years of a finding of guilty. Fed. R. Crim. P. 33(b)(1). Here, the Judgment was entered in January 2006. Additionally, a change in the law is not a “fact.” See Whiteside v. United States, 775 F.3d 180, 184 (4th Cir. 2014) (holding that the announcement of a legal rule does not qualify as a new fact under 28 U.S.C. § 2255(f)(4)). Finally, the defendant’s reliance on Mathis is misplaced. That decision involved the direct appeal of a sentence under the Armed Career Criminal Act, and the defendant has not shown that its directions for employing the categorical approach for analyzing the nature of prior convictions has retroactive application to his sentence under the United States Sentencing Guidelines.

IT IS, THEREFORE, ORDERED that the defendant’s motion, (Doc. Nos. 141), is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: March 28, 2017

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

